

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 10 of 1998

and

CRIMINAL REVISION APPLICATION NO.11 OF 1998

For Approval and Signature:

Hon'ble MR.JUSTICE A.K.TRIVEDI

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
 2. To be referred to the Reporter or not?
 3. Whether Their Lordships wish to see the fair copy of the judgement?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge?

HARSUKHLAL LAXMANBHAI VAGODIA

Versus

STATE OF GUJARAT

Appearance:

MR KJ KAKKAD for Petitioners

MRS. B.R. GAJJAR, A.P.P.for Respondent No. 1

MR YN RAVANI for Respondent No. 2

CORAM : MR.JUSTICE A.K.TRIVEDI

Date of decision: 15/04/98

ORAL JUDGEMENT

1. The above referred to both the matters are filed by the same petitioners against the same respondents and as such both the matters being cognate are heard together and are being disposed of by this common order.

2. Shri K.J. Kakkad, learned Advocate appears on behalf of the petitioners in both the matters while Mr. Y.N. Ravani, learned Advocate appears for respondent no.2 in both the matters. Learned A.P.P Mrs. B.R. Gajjar appears for respondent no.1 in both the matters.

3. Rule. Learned Advocates for respective parties waives service of Rule.

4. The petitioners have challenged the legality and propriety of the order passed by the learned Judicial Magistrate, Mansa, District Mehsana. That in the proceedings of Criminal Revision Applications no.10/'98 an impugned order is passed in the proceedings of Criminal Case no.428/'95 while in the proceedings of Criminal Revision Application no.11/'98, the impugned order is passed in the proceedings of Criminal Case no.43/'96.

5. The respondent no.2 of the respective matters has prosecuted present petitioner by filing above stated criminal proceedings under Section 138 of the Negotiable Instruments Act. That learned Judicial Magistrate, Mansa, District Mehsana has taken cognizance and issued summons to the petitioners as accused. That the petitioners moved application Exh.56 dated 5-12-1997 in the proceedings of Criminal Case no.428/'95 and application Exh.42 dated 5-12-'97 in the proceedings of Criminal Case no.43/'95. That the petitioners have contended in both the matters vide said applications that under Section 138(B) of the Negotiable Instruments Act, notice on receipt of information regarding dishonour of a cheque is required to be given within a stipulated period and it is a mandatory provision. That , in the instant case, i.e. Criminal Case no.428/'95 the information was received on 10-7-'95 and the notice is issued on 25-7-'95. That calculating the days it cannot be said to have been issued within fifteen days. Similarly, in Criminal Case no.43/'95, the information was received on 5-12-1995 and the notice was issued on 20-12-1995 and as such there is a delay in sending the notice, and hence, complaint against the petitioners as accused should be dismissed.

6. That learned J.M.F.C, Mansa, District Mehsana heard both the applications in above stated proceedings and vide impugned orders dated 5-12-'97 rejected the applications holding that there cannot be a dispute with mandatory provisions of law for issuing a notice of fifteen days on dishonour of a cheque before filing a complaint under Section 138. However, as per the facts

in both the matters, the complainant has served the notice within prescribed period of fifteen days and as such the applications are not tenable at law.

7. Learned Advocate Shri K.J. Kakkad has referred to and relied on the provisions of Section 138(B) and 138(C) of the Negotiable Instruments Act and has vehemently urged that legislature has made the provision mandatory by using specific language and as such non compliance of mandatory provisions should render the proceedings void. That learned J.M.F.C. has committed a serious error by not accepting the proposition of law canvassed at the Bar and rejecting the complaint while passing the impugned order. Shri Kakkad has further submitted that issuance of notice before filing a complaint is a condition precedent. To support the said submission, Shri Kakkad has referred to and relied on the observations made in the matter reported vide 1991 Cr.L.J. p.3010. It is further submitted that the Court cannot add at its wisdom in the legislative provisions particularly when mandatory provisions are made for compliance by the legislature. To support the submissions Shri Kakkad has referred to and relied on the observations made in 1992 Cr.L.J. p.2566. Referring to observations made in the matter reported vide Vol. No.87 1996 Company Cases p.135, Shri Kakkad has urged that demand by notice before filing complaint under Section 138 of the Negotiable Instruments Act is a mandatory provision. Furthermore, Shri Kakkad has also referred to and relied on the provisions of Section 5 of the Criminal Procedure Code, 1973 and has urged that applicability of the provisions of other law is excluded by said provisions in the Code of Criminal Procedure. That thereby provisions of Section 473 of the Criminal Procedure Code has no application while computing the limitation for the duration of notice period as prescribed under Section 138(B) of the Negotiable Instruments Act. To support the said submission, Shri Kakkad has referred to and relied on the observations made in the matter reported vide 1992(2) Bank C.L.R p.635.

8. Having given my anxious thought to the facts and circumstances apparent from the record in the context of submissions urged by Shri K.J. Kakkad and various authorities cited at the Bar, in my opinion, the impugned order passed by the learned J.M.F.C. in above stated both the matters does not require any interference as the said order is eminently just, proper and reasonable.

9. It may be noted that Section 138 of the

Negotiable Instruments Act is a Central Act and as such the provisions of General Clauses Act, 1897 is applicable while construing the provisions of said Act. That Section 9 of General Clauses Act, 1897 reads as under:

"9. Commencement and termination of time._(1) If any [Central Act] or Regulation made after the commencement of this Act, it shall be sufficient for the purpose of excluding the first in a series of days or any other period of time, to use the words " from", and, for the purpose of including the last in a series of days or any other period of time, to use the word "to".

10. That accordingly while computing the notice period as prescribed under Section 138(B) of the Negotiable Instruments Act, the day on which the information of dishonour of cheque is received has to be excluded while calculating the limitation of fifteen days for the service of notice. That accordingly, the learned J.M.F.C. has held in both the matters that statutory notice served by the complainant on the present petitioners before filing the respective complaints was served within the prescribed period of fifteen days and as such the application moved on behalf of the petitioners to dismiss the complaint cannot be accepted.

11. On the basis of the above stated grounds, I hold that both the Revision Applications cannot be sustained and stands disposed of as rejected. The petitioner appears to have prolonged the proceedings of Criminal trial by resorting to different proceedings on various technical aspects and as such I hold that the petitioners shall pay costs of Rs.500/- in each matter to respondent no.2 and Rs.500/-for respondent no.1 which shall be sent to Legal Aid Committee. Rule is discharged. Interim relief granted earlier stands vacated.

12. After the pronouncement of this order, learned Advocate Mr. K.J. Kakkad has requested to stay the operation of this order for a period of six weeks so as to enable the petitioner to approach the higher forum. In my opinion, such a request cannot be accepted in view of the fact that criminal complaint filed against the present petitioners in a trial Court has remained stayed for a considerably long period on one or the other ground of filing the proceedings. Such proceedings ought to have been completed within a period of six months and on that consideration request made by the learned Advocate Shri K.J. Kakkad has to be rejected.

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